

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
GEORGE FUGAMI dba
FAIRMOUNT HOTEL,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 459

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 7th day of February, 1974, at Seattle, Washington; and appellant George Fugami appearing pro se and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin; and Board members present at the hearing being Walt Woodward (presiding) and Mary Ellen McCaffree; and the Board having considered the sworn testimony, exhibits, records and files herein and arguments of the parties and having

1 entered on the 6th day of March, 1974, its proposed Findings of Fact,
2 Conclusions of Law and Order, and the Board having served said proposed
3 Findings, Conclusions and Order upon all parties herein by certified
4 mail, return receipt requested and twenty days having elapsed from
5 said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 6th day of
11 March, 1974, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's Final
3 Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 5th day of April, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16 
17 WALT WOODWARD, Chairman

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19 MARY ELLEN McCAFFREE, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

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This matter, the appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before two members of the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) at a formal hearing in the Washington Commerce Building, Seattle, Washington at 9:30 a.m., February 7, 1974.

Appellant appeared pro se; respondent appeared through its counsel, Keith D. McGoffin. Eugene Barker, Olympia court reporter, recorded the proceedings.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were admitted.

2 Arguments were made.

3 From testimony heard, exhibits examined and arguments considered,
4 the Pollution Control Hearings Board makes these

5 FINDINGS OF FACT

6 I.

7 Mr. George Fugami (hereinafter appellant) has been manager of
8 the Fairmount Hotel, 1907 - 1st Avenue, since 1955. He does not
9 own the building, he leases the hotel in the building and is in
10 charge of the operation of the oil fired boiler which is used to
11 heat the entire building. He testified that he tried to keep up
12 to a regular maintenance program on the furnace and that he did
13 clean it every week.

14 II.

15 The Puget Sound Air Pollution Control Agency (hereinafter
16 respondent) notified the appellant by letter of a violation on
17 April 25, 1968 for black smoke emission for a period of 20 minutes
18 with a reading of a Ringelmann No. 5. A member of the respondent's
19 staff talked with appellant on May 27, 1968. The appellant had
20 at that time fixed the boiler ignition system which had malfunctioned
21 causing the black smoke emission. No civil penalty was received
22 by the appellant in connection with aboved described violation.

23 III.

24 On February 7, 1969, a second notice of violation was issued
25 to the appellant for allowing black smoke emission from the square
26 red brick stack of his hotel. No civil penalty was imposed for this

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AND ORDER

1 second violation.

2 IV.

3 On September 5, 1973, at about 2:00 p.m. from the brick roof stack
4 of the appellant's hotel there was emitted for at least six consecutive
5 minutes black smoke in the shade of 2 3/4 to 3 1/2 on the Ringelmann Chart.

6 V.

7 Section 9.03 of respondent's Regulation I makes it unlawful
8 to cause or allow an air contaminant for a period of more than
9 three minutes in any one hour of a shade darker than that designated
10 as No. 2 on the Ringelmann Chart.

11 VI.

12 An inspector on respondent's staff, after observing the above
13 described emission, issued Notice of Violation No. 8321 to appellant.
14 Subsequently, and in connection therewith, appellant was served with
15 Notice of Civil Penalty No. 1147 in the amount of \$50.00, being
16 one-fifth of the maximum amount which respondent may invoke for a
17 violation of its Regulation I. That penalty is the subject of this
18 appeal.

19 VII.

20 Upon being notified of the alleged violation, appellant cleaned
21 out the plugged air vent of the boiler furnace which had caused the
22 problem. It is evident that the appellant is in need of some kind
23 of electric eye photometer to warn him when something is wrong with
24 his boiler, before it emits the black smoke into the air. However,
25 as yet he has not installed such a warning device.

26 FINDINGS OF FACT,
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1 From these findings, the Pollution Control Hearings Board
2 comes to these

3 CONCLUSIONS OF LAW

4 I.

5 Appellant was in violation of respondent's Regulation I as
6 cited in Notice of Violation No. 8321. The violation was not
7 deliberate, but no permanent solution has been incorporated into
8 the boiler system to obliterate further violations.

9 II.

10 The penalty in Notice of Civil Penalty No. 1147 is both reasonable
11 and lenient.

12 Therefore the Pollution Control Hearings Board issues this

13 ORDER

14 The appeal is denied and Notice of Civil Penalty No. 1147 in
15 the amount of \$50.00 is sustained.

16 DONE at Lacey, Washington, this 6th day of March, 1974.

17 POLLUTION CONTROL HEARINGS BOARD

18 Walt Woodward
19 WALT WOODWARD, Chairman
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21 Mary Ellen McCaffree
22 MARY ELLEN McCAFFREE, Member
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26 FINDINGS OF FACT,
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